State Of Maharashtra Vs Pandurang Babu Patil And Ors

Court: Bombay High Court

Date of Decision: Feb. 12, 2020

Acts Referred: Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 â€" Section 3(1)(x)
Indian Penal Code, 1860 â€" Section 34, 147, 148, 149, 323, 504, 506
Evidence Act, 1872 â€" Section 114(g)
Code Of Criminal Procedure, 1973 â€" Section 313, 378, 386

Hon'ble Judges: K.R. Shriram, J

Bench: Single Bench

Advocate: Anamika Malhotra, R.D. Suryawanshi

Final Decision: Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 27th February 2002 by which the Joint District Judge and Additional Sessions Judge,

Thane, acquitted 7 persons, who were accused of offences punishable under Section 3 (1) (x) (intentionally insults or intimidates with intent to

humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (SC/ST Act) and under Section 147 (Punishment for rioting), 148 (Rioting, armed with deadly weapon), 323

(Punishment for voluntarily causing hurt), 504 (Intentional insult with intent to provoke breach of the peace), 506 (Punishment for criminal intimidation)

read with Section 149 (Every member of unlawful assembly guilty of offence committed in prosecution of common object) or in the alternative,

Section 34 (Acts done by several persons in furtherance of common intention) of Indian Penal Code (IPC).

2. Accused no.1 died on 25th January 2003 and accused no.7 died on 5th April 2006.

3. When the matter was called out yesterday, Mr. Suryawanshi mentioned that he has been briefed to appear on behalf of accused nos.2 to 6, who

are respondent nos.2 to 6, and requested the matter be stood over to today so that he can consider the papers and assist the Court. Complainant also

was present yesterday and stated that he has engaged services of an advocate and he gave the name of his advocate first as Mr. Rahul Singh and

then corrected it to Mr. Rajesh Singh. Original complainant, who is PW-1, stated that his advocate was not present in Court. Complainant was told

that the matter is stood over to today and his advocate should be here to argue the matter when the matter is called out. Complainant understood and

said that he will keep his advocate present. Complainant was also given a liberty to take copies of any paper that he wanted from the CourtÃ¢â‚¬â„¢s

records and learned APP stated that if any papers are required, it may be taken from her also.

4. Though original complainant was told by the Court that the matter will not be adjourned on any ground because it is an appeal of 2003 and 17 years

have passed since then, today nobody is present for original complainant. Even original complainant is absent.

5. The fact in brief is that complainant - Baban Hiraman Gaikwad (PW-1) belongs to Hindu Cobbler community, whereas accused nos.1 to 7 are

Hindu Maratha Kunbi by caste. Complainant is a resident of village Khanivali, Taluka Ã¢â‚¬" Wada, District - Thane. Complainant, when the appeal was

filed, was residing alongwith his family members at Agashi, Taluka Ã¢â‚¬" Vasai, District Ã¢â‚¬" Thane.

6. Complainant works as an Enquiry Officer in Land Development Bank, Sub-branch Virar, since two years before the appeal was filed. His mother

Janabai, brother Raghunath and his wife Sandhya used to reside at Khanivali. Complainant used to go to Khanivali every Sunday to look after his

landed property. Complainant and his relatives owned land gat no.38 admeasuring 30 R situated at village Bhaveghar. Accused no.1 also has land

adjacent to the land of complainant. Accused has erected fence around his house which encroached into land gat no.38 of complainant and therefore,

on 18th March 2000, complainant got his land measured through Taluka Inspector, Land Records, Wada. After measurement, he fixed boundary

stones around his land. Even after measurement, the fence put by accused no.1 was encroaching into land gat no.38 of complainant. Therefore,

complainant asked accused no.1 from time to time to remove his fence but the same was not removed by accused no.1.

7. On 20th August 2000 at about 12.30 p.m., complainant, his aunt Savitribai, wife of Dhauram Gaikwad and sister-in-law Sandhya, wife of Raghunath

Gaikwad, went to land gat no.38. Complainant asked accused no.1 to remove his fencing from gat no.38 but accused no.1 replied that if complainant

wants to remove, he may remove. Complainant, therefore, started removing the fence. At that time, accused nos.1 to 7 abused complainant as

Chambardya and also threatened to kill him if he did not go away. It is the case of complainant that accused no.2 assaulted complainant above his

forehead with a stick, whereas the other accused punched him and kicked him. At that time, complainantÃ¢â‚¬â„¢s aunt Savitribai and sister in law

Sandhya intervened to rescue him but accused no.5 hit Savitribai on her right wrist with stick, whereas the other accused kicked and punched

Savitribai and Sandhya. Thereafter, accused nos.1 to 7 left the spot after abusing and threatening them.

8. Complainant, therefore, lodged a complaint against the accused, under the offences as noted in paragraph 1 above, at Wada Police Station, District

Thane. On 6th October 2000 chargesheet was filed and charges were framed against the accused. The accused pleaded not guilty and claimed to be

tried. The Trial Court, after considering the evidence, passed the judgment, which is impugned.

9. To prove the guilt of the accused, prosecution led evidence of four witnesses, viz., Baban Hiraman Gaikwad, complainant as PW-1, Ravindra

Shivram Bhoir, a panch witness for recovering blood stained shirt of PW-1 as PW-2, Savitribai Dhauram Gaikwad, an eye witness and one of those

injured in the melee as PW-3 and Ananta Dharma Bhoir, a panch witness in whose presence the arrest panchnama was prepared and weapon used in

commission of offence was recovered as PW-4.

10. Interestingly and which is a main dent in the case of prosecution is that the Investigating Officer was never examined. PW-4 was declared hostile.

Illustration (g) of Section 114 of the Indian Evidence Act, 1872 provides the Court may presume that evidence which could be and is not produced

would, if produced be, unfavourable to the person who withholds it. The fact that the Investigating Officer also has not been examined would show

that if examined, his evidence would have been unfavourable to complainant. Non examining the Investigating Officer as a witness in the

circumstances of the case would have caused grave prejudice to the accused. The Apex Court in Habeeb Mohammad V/s. The State of Hyderabad

AIR 1954 SC 51 observed that it was the bounden duty of the prosecution to examine the Investigating Officer, who is a material witness in the case

particularly when no allegation was made that if produced, he would not speak the truth and in any case, the Court would have been well advised to

exercise its discretionary powers to examine the witness.

11. Therefore, adverse inference arises against the prosecutionÃ¢â‚¬â„¢s case from its non production of the Investigating Officer as a witness in view of

illustration (g) to Section 114 of the Indian Evidence Act. The Investigating Officer is the principal architect and executor of the entire investigation.

He is a crucial witness for purposes of establishing that there are omissions and contradictions but more importantly, it is always open to the defence

to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or

dishonest, those factors prove fatal to the prosecution. In the given instance, the accused was totally precluded from an opportunity of being able to

establish the further infirmities in the prosecutionÃ¢â‚¬â„¢s case and on this ground alone, the order of acquittal will have to be confirmed.

12. Section 3 (1) (x) of SC/ST Act reads as under:

Ã¢â‚¬Å“3. Punishment for offences of atrocities:- (1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) to (ix) .....Ã¢â‚¬Â¦

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

(xi) to (xv).....Ã¢â‚¬â€‹

13. Ingredients for the offence under Section 3 (1) (x) are - (a) that complainant belongs to Scheduled Caste or Scheduled Tribe, (b) respondent does

not belong to Scheduled Caste or Scheduled Tribe, (c) respondent intentionally insulted or intimidated a member of Scheduled Caste or Scheduled

Tribe, (d) such an intentional insult was made with an intention to humiliate a member of Scheduled Caste or Scheduled Tribe, as an intent to humiliate

is necessary. It follows that respondent must have knowledge or awareness that the victim belongs to Scheduled Caste or Scheduled Tribe and (e)

finally, such an intentional insult with an intention to humiliate, must be made in any place within public view.

14. It is settled law that mere utterances or merely calling complainant a Chambhar cannot be treated as an atrocity as provided under the SC/ST Act.

The Apex Court in Swaran Singh & Ors. V/s. State through Standing Counsel & Anr. (2008) 12 SCR 13 2observed that Ã¢â‚¬Å“calling a member of the

Scheduled Caste Chamar with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3 (1) (x) of the Act.

Whether there was intent to insult or humiliate by using the word Chamar will of course depend on the context in which it was used.Ã¢â‚¬â€‹

The Karnataka High Court in Chandra Poojari V/s. State Of Karnataka 1998 Cri LJ 5 3held that merely calling someone by his caste does not attract

the provisions of the SC/ST Act. It has to be proved that respondent was aware that complainant belongs to that caste and respondent was conscious

of the fact that the act was committed knowing the victim belongs to the Scheduled Caste. The prosecution also has to prove mens rea on the part of

respondent to insult complainant by calling him by that name.

15. In my view, having considered the evidence, the case of prosecution falls flat on all these points.

16. As regards the caste of the accused, in their statement under Section 313 of the Code of Criminal Procedure, they admit that they are of Maratha

Kunbi community. Therefore, to that extent, the accused not belonging to a Scheduled Caste or Scheduled Tribe is not in dispute. But the complainant

has to prove that he belongs to a Scheduled Caste or Scheduled Tribe. Admittedly, there is no evidence which is exhibited to prove that complainant

belonged to a Scheduled Caste or Scheduled Tribe. Only a xerox copy is given, which is marked as Article Ã¢â‚¬Å“DÃ¢â‚¬. PW-1 says that the original caste

certificate is in Land Development Bank, Branch Thane. Nothing prevented prosecution to produce the original caste certificate from the bank or

have summons issued to the bank to produce the original caste certificate. Therefore, on this ground alone, the charge under Section 3 (1) (x) of

SC/ST Act has to fail.

17. Secondly, in the evidence, PW-1 says it is only accused no.1 who called him Chambardya. Accused no.1 has died. In view thereof, this charge

cannot stick against the other accused. Further, the insult or intimidation should happen in a place within public view. The specific words Ã¢â‚¬Å“in a place

within public viewÃ¢â‚¬ indicates that the act of intentional insult or intimidation with an intent to humiliate must be caused in a place within public view.

As in the case of defamation, mere indication of defamatory words by a letter between two parties inter-se by itself would not amount to defamation

unless there is publication, meaning thereby bringing it to notice such insult or defamatory statement to the knowledge of others or public. Similarly in

the present case, the humiliation must be in a place within public view. If a person is abused and even humiliated in a close confined place where

public had no access or no public was present, then, taking into consideration the specific words, it may not, in a given case amount to commission of

offence under Section 3 (1) (x) of the SC/ST Act.

18. Therefore, even though complainant states that accused no.1, who is now dead, abused him and humiliated him in the land that belonged to him,

i.e., gat no.38, no public was present and therefore, I cannot conclude that specific words were uttered in a place within public view. On this ground

also, the charge has to fail.

19. As regards the other charges, PW-4, who was a panch witness at the time of arrest and seizure of weapons, states that no accused gave

memorandum before Police in his presence for producing weapons used in commission of offence, nor they produced weapons before Police in his

presence. PW-4 also denies that accused no.6 gave memorandum before S.D.P.O., Jawhar for producing wooden stump used in commission of

offence on 5th September 2000 in his presence. Likewise, accused no.3 or accused no.5 did not give any weapon in his presence as noted in the

panchnama.

20. Further, no Doctor has been examined nor any medical reports are filed to prove any assault or injury. Therefore, the other charges also have to

fail.

21. From the evidence, it looks more like a dispute over land and complainant probably thought it would be easier to take this route than filing a civil

suit to have accused no.1 evicted.

22. The Apex Court in Ghurey Lal V/s. State of U.P. (2008) 10 SCC 450 has culled out the factors to be kept in mind by the Appellate Court while

hearing an appeal against acquittal. Paragraph nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its

power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion

with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is

not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial

court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is

going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has ""very substantial and compelling reasons"" for doing so.

A number of instances arise in which the appellate court would have ""very substantial and compelling reasons"" to discard the trial court's decision.

Very substantial and compelling reasons"" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in ""grave miscarriage of justice"";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the

Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour

of the accused.

23. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the

accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a

competent court of law. Secondly, accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and

strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

24. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal,

in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

25. Appeal dismissed.